



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0270]**

**RIN 1625-AA00**

### **Safety Zone; North Atlantic Ocean, Ocean City, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters of the North Atlantic Ocean adjacent to Ocean City, MD. This action is necessary to provide for the safety of life on the navigable waters during an air show on May 23, 2018. This action will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

**DATES:** This rule is effective from 1:30 p.m. to 4 p.m. on May 23, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0270 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ronald Houck, Sector Maryland-National Capital Region Waterways

Management Division, U.S. Coast Guard; telephone 410-576-2674, email  
Ronald.L.Houck@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On February 21, 2018, the Town of Ocean City, MD notified the Coast Guard that from 2 p.m. to 3:30 p.m. on May 23, 2018, it will be conducting the Canadian Snowbirds Air Show Featurette above the North Atlantic Ocean adjacent to Ocean City, MD. In response, on April 16, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone; North Atlantic Ocean, Ocean City, MD" (83 FR 16265). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 16, 2018, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with an air show.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The

Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with this May 23, 2018 air show will be a safety concern for anyone operating within certain waters of the North Atlantic Ocean adjacent to Ocean City, MD. The purpose of this rule is to ensure the safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published April 16, 2018. Therefore, there are no substantive changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 1:30 p.m. to 4 p.m. on May 23, 2018. The safety zone will cover all waters of the North Atlantic Ocean, within an area bounded by the following coordinates: commencing at a point near the shoreline at latitude 38°20'33.3" N, longitude 075°04'37.7" W, thence eastward to latitude 38°20'24.9" N, longitude 075°04'01.5" W, thence southward to latitude 38°19'18.4" N, longitude 075°04'26.9" W, thence westward to latitude 38°19'27.0" N, longitude 075°05'03.0" W, thence northward to point of origin, located adjacent to Ocean City, MD. The duration of the zone is intended to ensure the safety of life on these navigable waters before, during, and after the scheduled 2 p.m. air show. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which would impact a small designated area for less than 3 hours during a Wednesday before Memorial Day when vessel traffic in the North Atlantic Ocean is normally low. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine band radio channel 16 to provide information about the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than three hours that would prohibit vessel movement within a portion of the North Atlantic Ocean. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. *Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0270 to read as follows:

§ 165.T05-0270 Safety Zone; North Atlantic Ocean, Ocean City, MD.

(a) Location. The following area is a safety zone: All waters of the North Atlantic Ocean, within an area bounded by the following coordinates: commencing at a point near the shoreline at latitude 38°20'33.3" N, longitude 075°04'37.7" W, thence eastward to latitude 38°20'24.9" N, longitude 075°04'01.5" W, thence southward to latitude 38°19'18.4" N, longitude 075°04'26.9" W, thence westward to latitude 38°19'27.0" N, longitude 075°05'03.0" W, thence northward to point of origin, located adjacent to Ocean City, MD. All coordinates refer to datum NAD 1983.

(b) Definitions. As used in this section:

(1) Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcement of the safety zone described in paragraph (a) of this section.

(c) Regulations. The general safety zone regulations found in 33 CFR part 165, subpart C apply to the safety zone created by this section.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone are to obtain authorization from the Captain of the Port Maryland-National Capital Region or



designated representative. To request permission to transit the area, the Captain of the Port Maryland-National Capital Region and or designated representatives can be contacted at telephone number 410-576-2693 or on marine band radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted to enter the safety zone, all persons and vessels must comply with the instructions of the Captain of the Port Maryland-National Capital Region or designated representative and proceed as directed while within the zone.

(4) Enforcement officials. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) Enforcement period. This section will be enforced from 1:30 p.m. to 4 p.m. on May 23, 2018.

Dated: May 18, 2018

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.  
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